

STATE OF MICHIGAN
COURT OF APPEALS

HAROLD ALTON WARD, Trustee under a
Revocable Living Trust dated June 13, 1994,
MARY BELL WARD, Trustee under a Revocable
Living Trust dated June 13, 1994, EVERETTE W.
WHITE and LINDA WHITE,

UNPUBLISHED
February 11, 2003

Plaintiffs-Appellants,

v

EDWARD M. BLAKE and CHERYL M. BLAKE,

No. 232271
Macomb Circuit Court
LC No. 97-002726-CH

Defendants-Appellees.

Before: Murphy, P.J., and Cavanagh and Neff, JJ.

PER CURIAM.

Plaintiffs brought this quiet title action in order to establish the boundary line between the parties' adjacent parcels of land located in Armada, Michigan. Following a bench trial, the trial court found that plaintiffs were not entitled to any relief on their claims, and instead entered judgment in favor of defendants, finding that they acquired additional property at their western boundary extending to the edge of a drainage furrow by adverse possession and acquiescence. Plaintiffs appeal as of right. We reverse.

Plaintiffs, who own contiguous parcels of property adjacent to defendants' property,¹ brought this suit in June 1997, seeking to establish the boundary line between their property and defendants. Plaintiffs claimed that the boundary was established by a fence erected in 1935 that ran alongside a line of trees. Defendants claim that, in accordance with a survey,² their property line extended west of the fence line by about 7.5 feet in the front and 4.5 feet at the back. Further, defendants claimed title to additional land west of the survey line, under a theory of adverse possession.

¹ The Wards' property lies north of the Whites' property; both of which lie to the west of the Blakes' property.

² The survey was completed before defendants purchased their property, and the corresponding survey stakes were in place and visible when the Blakes took possession of their land.

Following a bench trial, the court concluded that the 1935 fence line had become the true property line by 1977, by virtue of the doctrine of acquiescence. This finding is not challenged on appeal. However, the trial court agreed with defendants that they had acquired additional property beyond the fence line by adverse possession and acquiescence. The court therefore set the boundary at the edge of a drainage furrow that lied even further west of the survey line.

Actions to quiet title are equitable and, therefore, are reviewed de novo, but the trial court's factual findings will not be reversed unless they are clearly erroneous. *Gorte v Dept of Transportation*, 202 Mich App 161, 171; 507 NW2d 797 (1993). To establish adverse possession, defendants were required to show that their possession was actual, visible, open, notorious, exclusive, hostile, under cover of claim or right, and continuous and uninterrupted for the statutory period of fifteen years. *West Michigan Dock & Market Corp v Lakeland Investments*, 210 Mich App 505, 511; 534 NW2d 212 (1995). The doctrine of adverse possession is strictly construed, and the party alleging title by adverse possession must prove the same by clear and positive proof. *Strong v Detroit & Mackinac Ry Co*, 167 Mich App 562, 568; 423 NW2d 266 (1988).

Initially, we agree with plaintiffs' argument that the trial court erred to the extent that it awarded defendants any of the Wards' property, because there was no evidence that defendants ever cleared any portion of the Wards' property. We reject defendants' claim that Harold Ward acquiesced in the 1975 survey, because the evidence established that he was unaware of it.

Plaintiffs further argue that the trial court clearly erred in using 1977 as a reference point for evaluating defendants' adverse possession claim. Plaintiffs contend that defendants merely began clearing the disputed area that year, but there was nothing indicating that their activity extended out to the drainage furrow that year. Additionally, plaintiffs contend that there was a factual controversy concerning what portions of the disputed area were cleared and when, thus there was a lack of clear and positive proof supporting adverse possession.

To claim property by adverse possession, one must show that the property owner of record has had a cause of action for recovery of the land for more than the statutory period. *Kipka v Fountain*, 198 Mich App 435, 439; 499 NW2d 363 (1993). A cause of action accrues when the proper owner has been deprived of possession or displaced by someone exercising the powers and privileges of ownership. *Id.*

In this case, in 1977, the boundary between the parcels was the fence line within the tree and brush line by virtue of acquiescence. By December 1977, Edward Blake took out part of the 1935 fence and began clearing the brush, which had engulfed both sides of the tree and fence line. This included brush to the west of the line. Clifford Lawson, the Whites' predecessor in title, objected and told Blake to stop trespassing; however, Blake ignored Lawson and continued clearing the area. Thus, in 1977, Edward Blake began exercising the powers and privileges of ownership. Lawson had a cause of action against Blake beginning in 1977. Taking into consideration only the disputed property between the parcels owned by the Whites and the Blakes, although the record is not entirely clear regarding the exact location of the brush that was cleared in 1977³ and specifically when and where further brush was cleared, there was

³ There was sufficient evidence, however, that the activity encroached on the property currently
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substantial evidence that the area had been cleared completely by 1981. The evidence also showed that defendants began grading, raking, seeding, mowing, and otherwise maintaining the disputed area since 1981. Therefore, the statutory period was satisfied as to actual possession.

Plaintiffs' reliance on aerial photographs and the testimony of Joseph Blake, who cleared part of the brush with a bulldozer, as evidence that the disputed area was not cleared until 1983 or later is misplaced. Joseph Blake could not remember exactly when he cleared the property; however, the first time was probably in 1980 or 1981 according to Blake, and with regard to the second and final time, all Blake could say was that it was probably before 1984. The aerial photos are simply inconclusive on the subject.

Plaintiffs also contend that the element of hostility was not satisfied. "Hostile" use is "use inconsistent with the right of the owner, without permission asked or given, use such as would entitle the owner to a cause of action against the intruder." *Connelly v Buckingham*, 136 Mich App 462, 472; 357 NW2d 70 (1984), quoting *Mumrow v Riddle*, 67 Mich App 693, 698; 242 NW2d 489 (1976). Plaintiffs rely on authority establishing that where a landowner possesses the land of an adjacent owner with the intent to hold to the true line, the possession is not hostile and cannot establish adverse possession. See *Gorte, supra* at 170. However, a corollary to this rule is that, when the possessor manifests an intent to claim title to a visible, recognizable boundary, regardless of the true boundary line, the possession is hostile and adverse possession may be established. *Id.*; *DeGroot v Barber*, 198 Mich App 48, 51; 497 NW2d 530 (1993). This case falls within this second principle because, as the trial court noted, the true boundary was actually the 1935 fence line, having been established for more than fifteen years. *Sackett v Atyeo*, 217 Mich App 676, 682-683; 552 NW2d 536 (1996). Defendants' use was hostile, because Edward Blake was respecting a visible line believed to be the boundary, i.e., the survey marker placed prior to his ownership, but which was not really the true boundary.

Plaintiffs next argue that remand is required because the trial court failed to make the necessary findings concerning whether defendants' use of the disputed property was exclusive. Mutual use is insufficient to establish adverse possession because the use must be exclusive. *West Michigan Dock, supra* at 511. Although not included in the trial court's discussion of adverse possession, the court found, in discussing acquiescence, that "plaintiffs, and their predecessor in title, respected and observed the boundary established by defendants at the edge of the drainage furrow for the statutory period." This particular finding of fact is equally applicable to the "exclusivity" element of adverse possession, and necessarily establishes the trial court's position that the use was not mutual. However, we hold that this factual finding was clearly erroneous in light of the evidence presented at trial.

Harold Ward, who farmed the Whites' property, testified that after the fence and brush disappeared in the 1980's, he would plow up to the tree line. Everette White testified that he cleaned up the area between where Ward farmed and the tree line at least until the late 1980's or early 1990's. Accordingly, we conclude that the "exclusivity" element of adverse possession was not satisfied as it is evident that all parties were involved in some manner in maintaining the disputed area west of the tree and fence line. Likewise, because of this mutual and conflicting

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owned by the Whites, especially considering the trespassing accusations by Clifford Lawson.

use, it cannot be said that the parties acquiesced and treated the drainage furrow as the boundary line for the statutory period. *McQueen v Black*, 168 Mich App 641, 644; 425 NW2d 203 (1988).

Reversed and remanded for entry of judgment in favor of plaintiffs establishing the 1935 fence line as the boundary between the adjacent parcels. We do not retain jurisdiction.

/s/ William B. Murphy

/s/ Mark J. Cavanagh

/s/ Janet T. Neff